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Counsel to the Debtors and
 Debtors in Possession

UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

- - - - -	X	
In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC.,	:	Case No. 08-35653 (KRH)
<u>et al.</u> ,	:	
	:	
Debtors.	:	Jointly Administered
- - - - -	X	- - - - -
CIRCUIT CITY STORES, INC.,	X	Adv. Pro. Case No. 09-03225
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CREATIVE LABS, INC.,	:	
	:	
Defendant.	:	
- - - - -	:	
	X	

MOTION TO SEAL EXHIBIT

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors")¹ hereby move

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia,

(the "Motion") for entry of an order substantially in the form of Exhibit A hereto, pursuant to sections 107(b)(1) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Debtors in the above-captioned Adversary Proceeding to file certain documents under seal. In support of the Motion, the Debtors respectfully represent:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018.

Inc. (2821), Circuit City Proper ties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc.(6796), Sky Venture Corp. (0311), PRAHS, Inc.(n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address was 9950 Mayland Drive, Richmond, Virginia 23233 and currently is 4951 Lake Brook Drive, Glen Allen, Virginia 23060.

BACKGROUND

3. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

6. The Debtors and the above-captioned defendant, Creative Labs, Inc. (the "Defendant") are parties to a certain Direct Retail Agreement for the sale of goods produced by the Defendant in the Debtors' stores (the "Creative Labs Contract").

7. On November 23, 2009, the Debtors filed their Complaint (the "Complaint") against the Defendant.

RELIEF REQUESTED

8. By this Motion, the Debtors respectfully request entry of an order pursuant to section 107(b) and Bankruptcy

Rule 9018 granting the Debtors leave to file under seal the Creative Labs Contract.

BASIS FOR RELIEF

9. Section 107(b) of the Bankruptcy Code authorizes the Court to issue orders to protect entities from potential harm caused by the disclosure of confidential information.

In particular, section 107(b) provides that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may -

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information.

. . . .

11 U.S.C. § 107(b)(1).

10. In addition, pursuant to Rule 9018 of the Federal Rules of Bankruptcy Procedure:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

FED. R. BANKR. P. 9018.

11. In granting relief under section 107(b) of the Bankruptcy Code, "[t]he court determines whether the subject documents fall within the provisions of § 107(b) and the

appropriate remedies if they do." In re Barney's, Inc., 201 B.R. 703, 707 (Bankr. S.D.N.Y. 1996). If the documents in question fall within the parameters of section 107(b), "the court is *required* to protect a requesting party and has no discretion to deny the application." In re Orion Pictures Corp., 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original); see also In re Lomas Fin. Corp., 1991 WL 21231, at *2 (S.D.N.Y. Feb. 11, 1991) (noting the broad scope of the term "commercial information"). Public access to the confidential record should be denied if "closure is essential to preserve higher values and is narrowly tailored to serve that interest." In re Washington Post Co., 807 F.2d 383, 390 (4th Cir. 1986) (quoting Press-Enterprise I, 464 U.S. 501, 510 (1984)); see also In re Nunn, 49 B.R. 963, 965 (Bankr. E.D. Va. 1985) (sealing customer list because allowing "a competitor access to [creditor's] customer list would obviously have an adverse effect on [creditor]").

12. Due to the confidential and/or proprietary and sensitive nature of the Creative Labs Contract, the Debtors respectfully submit that good cause exists for the relief requested.

13. The Debtors will deliver copies of the Creative Labs Contract to chambers for in camera review by the Court

and to the Office of the United States Trustee for the Eastern District of Virginia and counsel to the Creditors' Committee.

14. The Debtors propose to serve this Motion upon: (i) the Office of the United States Trustee for the Eastern District of Virginia, (ii) counsel to Creditors' Committee; (iii) parties who have requested notice pursuant to Bankruptcy Rule 2002; and (iv) the Core Group (as defined in the Case Management Order entered on November 13, 2008 at Docket No. 130). The Debtors submit that, under the circumstances, no other or further notice of the Motion is required.

WAIVER OF MEMORANDUM OF LAW

15. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Debtors request that the requirement that all motions be accompanied by a separate memorandum of law be waived.

NO PRIOR REQUEST

16. No previous motion for the relief sought herein has been made to this or any other Court.

CONCLUSION

WHEREFORE the Debtors respectfully request that the Court enter an order substantially in the form of Exhibit A attached hereto and grant the Debtors such other and further relief as is just.

Dated: Richmond, Virginia December 1, 2009	<u>/s/ Douglas M. Foley</u> . Douglas M. Foley (VSB No. 34364) Bryan A. Fratkin (VSB No. 38933) McGUIREWOODS LLP One James Center 901 E. Cary Street Richmond, Virginia 23219 (804) 775-1000 Counsel for Debtors and Debtors in Possession
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Exhibit A

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	:	
CREATIVE LABS, INC.,	:	
	:	
Defendant.	:	
- - - - -	:	
	X	

ORDER AUTHORIZING DEBTORS TO FILE EXHIBIT UNDER SEAL

Upon the motion (the "Motion")¹ of the Debtors for an Order, pursuant to section 107(b)(1) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure,

¹ Capitalized terms used herein shall have the meanings ascribed to such terms in the Motion.

wherein the Debtors requested authority to file certain documents under seal; and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby,

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED
2. The Debtors are authorized to file the Creative Labs Contract under seal and provide copies of the Creative Labs Contract to Chambers for in camera review, and to the Office of the United States Trustee for the Eastern District of Virginia and counsel to the Creditors' Committee.

3. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

Dated: Richmond, Virginia

_____, 2009

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Douglas M. Foley

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CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley

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